IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 73 of 1998
In
APPEAL UNDER SECTION 109 No. 15 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BEECHAM GROUP P.L.C. THROUGH REMFRY AND SAGAR - Appellant(s)

Versus

ESHAN PHARMACEUTICALS PVT.LTD. - Opponent(s)

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Appearance :
MR GN SHAH asissted by MS MINOO A SHAH for Appellant

None for Respondents.
NOTICE SERVED for Respondent No(s).: 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/07/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal under Section 109 of the Trade and Merchandise Marks Act, 1958 against the order dated 6.8.1998, passed by the learned Single Judge in Appeal No. 15 of 1993 filed under Section 109 of the Act, whereunder the learned Single Judge, after setting aside the order passed by the Registrar on 31st March, 1993, remanded the matter back to the Registrar with a direction to give them due opportunity of hearing, lead evidence and decide the matter in accordance with law. From the facts, it appears that the present respondent submitted an application for registration of the word “AMOXIL” as a Trade Mark claiming its user since 29th October, 1979. The application was advertised and the present appellant filed the objections. The Registrar granted an opportunity to the present respondent (applicant before the Registrar) to lead evidence. The evidence was led to some extent, but before it could be concluded on the part of the respondent, the present appellant made an application that on an earlier occasion, very same issue has been considered and as the objections raised by third party were upheld by the Registrar, no order in favour of the present respondent/original applicant could be made.

Learned Registrar left the proceedings for recording evidence, took up the application and after hearing the arguments only rejected the application. The said rejection was challenged by the present applicant in Appeal (Under Section 109) No. 15 of 1993.

2. The learned Single Judge, after giving due opportunity of hearing to the parties, by his judgment dated 6.8.1998, allowed the appeal making observations that the Registrar was not required to leave the proceedings in between, pick up another thread and decide the issue. The learned Single Judge also observed that in a case like the present, when the evidence was being brought before him, he should not have closed the right of the present respondent nor could proceed to decide an issue which was required to be decided at the time of final judgment. The learned Single Judge accordingly set aside the findings recorded by the Registrar and remanded the matter back to the learned Registrar with a direction that he shall not be constrained or bound by any opinion expressed in his order dated 31st March, 1993, but will have to examine the questions afresh and decide the matter in accordance with law. The learned Single Judge also directed that the present appellant shall be permitted to raise all objections as raised in

their interlocutory application and other grounds in support of the notice of opposition. The appellant being aggrieved by the said order is before this Court.

3. The learned counsel for the appellant submits that in a given case, if an issue or the whole matter can be disposed in view of the earlier findings recorded against the interest of the respondent, then, full-fledged trial is not required. The submission in fact, is that in view of the earlier orders passed by the Registrar, there was no need of evidence and earlier finding would make the case of the respondent fate-accompli.

4. After hearing the learned counsel for the appellant, we are of the opinion that the findings recorded in the earlier order may or may not bind the present respondent. But one this is certain that he would still have a right to explain that under what circumstances, such findings were recorded by the Registrar. In a given case, principle of res judicata may or may not apply. If the parties are not the same or similar or if they are not contesting under the same or similar title or they are not on the same issue, then, the findings recorded in an earlier proceeding may not bind the parties in their future litigations. In a given

case, the interpretation given by a Court may bind all concerned who were even not parties before the said Court. In the present matter, the Registrar has yet to see after considering the evidence that whether earlier order would operate as res judicata or the earlier order shall not close the rights of the present respondent for all practical purposes.

5. In our considered opinion, the learned Single Judge was absolutely justified in setting aside the order passed by the Registrar and remanding the case back with an opportunity in favour of the parties.

6. We find no reason to interfere. The appeal is dismissed.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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